

**INITIAL STATEMENT OF REASONS  
ADOPTION OF AMENDED REGULATIONS RELATING  
TO THE ATTORNEY GENERAL'S REVIEW OF  
HEALTH FACILITY TRANSACTIONS**

**I.     General Purpose of Regulations**

Prior to amendments effective January 1, 2003, Corporations Code sections 5914 - 5924 required any nonprofit corporation that is subject to the Nonprofit Public Benefit Corporation Law and operates or controls a health facility or operates or controls a health facility that provides similar health care, to provide written notice to, and obtain the written consent of, the Attorney General prior to selling or otherwise disposing of a material amount of its assets to a for-profit corporation or entity, a mutual benefit corporation or entity, or another public benefit corporation or entity.

Assembly Bill No. 890 (AB 890), which became effective on January 1, 2003, modified the existing law by making these requirements applicable to any nonprofit corporation that operates or controls a facility that provides similar health care, including religious corporations. The bill also authorized the Attorney General to consider, before consenting to an agreement by a nonprofit corporation to sell or dispose of its assets to another nonprofit corporation, whether the terms and conditions of the agreement or transaction are fair and reasonable to the selling nonprofit corporation, and whether the agreement or transaction is at a fair market value, as specified. AB 890 amended

Corporations Code sections 5914, 5917, 5919, 5920, 5921, 5923, and 5924. (Stats. 2002, ch. 427.)

Senate Bill 932 (SB 932), which took effect on January 1, 2004, added Corporations Code section 5917.5 to prohibit Attorney General consent to a transaction in which the seller restricts the types and level of medical services that may be provided at the health facility. (Stats. 2003, ch. 65.)

The proposed regulations amend section 999.5 of title 11 of the California Code of Regulations to implement AB 890 and SB 932. Additionally, the current regulations governing Attorney General review of health facility transactions were last amended in January 2001. The Attorney General has reviewed many proposed health facility transactions under the current regulations. This experience has shown that a number of changes in the regulations are necessary to improve the Attorney General's review process and to assist the parties to transactions and interested members of the public.

The proposed regulations include a more detailed description of the process for considering waivers of Attorney General review, changes in document-filing requirements, changes in the methods for determining whether transactions are at fair market value, requirements for maintaining existing levels of charity care and essential hospital services, and establishment of a procedure for amending the terms and conditions of the Attorney General's consent to a transaction.

Corporations Code sections 5918 and 5925 authorize the Attorney General to adopt regulations implementing the health facility transaction review law.

## **II. Technical Studies Relied Upon**

The Attorney General did not rely upon any technical, theoretical or empirical study, report or other similar document in proposing these regulations.

## **III. Alternatives to the Proposed Regulations**

Adoption of these proposed modifications is legally necessary to implement the amendments to Corporations Code sections 5914, 5917, 5919, 5920, 5921, 5923, and 5924. They are also necessary to improve the Attorney General's review process under Corporations Code sections 5914 through 5925.

## **IV. Economic Impact on Business**

The proposed regulations directly affect corporations and entities involved in transactions regarding health facilities that are operated or controlled by a nonprofit corporation. Except as necessary to implement AB 890, which expands the scope of Attorney General health facility transaction review, the proposed regulations do not impose additional costs on nonprofit corporations. Any costs to the nonprofit corporations involved in health facility transactions subject to Attorney General are reasonable and necessary to meet the requirements of Corporations Code section 5914 et seq.